

U.S. Department of the Interior  
Washington, DC 20240



# Code of Federal Regulations

**25**

Revised as of April 1, 2003

JUL 23 2004

## Indians

Containing a codification of documents  
of general applicability and future effect

As of April 1, 2003

*With Ancillaries*

Published by  
Office of the Federal Register  
National Archives and Records  
Administration

A Special Edition of the Federal Register

7-1684

of a written request from you or your guardian, as applicable, for a hearing to challenge the decision to restrict your IIM account

**§ 115.609 Will you be allowed to present testimony and/or evidence at the hearing?**

Yes, you or your guardian, as applicable, will be provided the opportunity to present testimony and/or evidence as to the reasons the BIA should not restrict your IIM account, including information showing how an encumbrance may create an undue financial hardship, if applicable. You may not challenge a court order or judgment in this proceeding. However, if you have appealed an order or judgment from a court of competent jurisdiction, you or your guardian, as applicable, may present evidence of your appeal and the BIA hearing will be postponed until there is a final order from the court. The restriction on your IIM account will remain in place until after the hearing is concluded.

**§ 115.610 Will you be allowed to present witnesses during a hearing?**

Yes, you or your guardian, as applicable, may present witnesses during a hearing. You are responsible for any and all expenses which may be associated with presenting witnesses.

**§ 115.611 Will you be allowed to question opposing witnesses during a hearing?**

Yes, you or your guardian, as applicable, may question all opposing witnesses testifying during your hearing. You may also present witnesses to challenge opposing witness testimony.

**§ 115.612 May you be represented by an attorney during your hearing?**

Yes, you may have an attorney or other person represent you during your hearing. However, you are responsible for any and all expenses associated with having an attorney or other person represent you.

**§ 115.613 Will the BIA record the hearing?**

Yes, the BIA will record the hearing.

**§ 115.614 Why is the BIA hearing recorded?**

The BIA hearing will be recorded so that it will be available for review if the hearing process is appealed under § 115.107. The BIA hearing record must be preserved as a trust record.

**§ 115.615 How long after the hearing will BIA make its final decision?**

BIA will make its final decision within 10 business days of the end of the hearing.

**§ 115.616 What information will be included in BIA's final decision?**

BIA's final written decision to the parties involved in the proceeding will include:

- (a) BIA's decision to remove or retain the restriction on the IIM account;
- (b) A detailed justification for the supervision or encumbrance of the IIM account, where applicable;
- (c) The amount(s) to be paid, the name and address of a third party to whom payment will be made, and the time period for repayment established under 617(a) of this part, where applicable;
- (d) Any provision to allow for distributions to the account holder because of an undue financial hardship created by the encumbrance, if applicable; and
- (e) Any other information the hearing officer deems necessary.

**§ 115.617 What happens when the BIA decides to supervise or encumber your IIM account after your hearing?**

BIA will provide OTFM with a copy of the distribution plan, after the BIA decides to

(a) Supervise your IIM account. BIA social services staff will consult with you and/or your guardian to develop a distribution plan. Upon BIA approval, the distribution plan will be valid for one year.

(b) Encumber your IIM account. BIA will review your account balance and your future IIM income to develop a distribution plan that establishes the amount(s) to be paid and the dates payment(s) will be made to the specified party. Payments may need to be made over the course of one or more years if

the amount owed to the specified party is greater than your current IIM account balance.

**§ 115.618 What happens if at the conclusion of the notice and hearing process we decide to encumber your IIM account because of an administrative error which resulted in funds that you do not own being deposited in your account or distributed to you or to a third party on your behalf?**

If we decide at the conclusion of the notice and hearing process to encumber your account because of an administrative error which resulted in funds that you do not own being deposited into your IIM account or distributed to you or to a third party on your behalf, we will consult with you or your guardian, as applicable, to determine how the funds will be re-paid.

**§ 115.619 If the BIA decides that the restriction on your IIM account will be continued after your hearing, do you have the right to appeal that decision?**

Yes, if the BIA decides after your hearing to continue the restriction on your IIM account, you or your guardian, as applicable, have the right to appeal the decision under the procedures proscribed in § 115.107.

**§ 115.620 If you decide to appeal the BIA's final decision pursuant to § 115.107, will the BIA restrict your IIM account during the appeal?**

Yes, if under § 115.107 you or your guardian, as applicable, decide to appeal the BIA's final decision to:

(a) Supervise your IIM account, your IIM account will remain restricted during the appeal period.

(b) Encumber your IIM account, your IIM account will remain restricted up to the amount at issue during the appeal period. If your account balance is greater than the amount encumbered, those funds will be available to you upon request to and by approval of the Secretary.

**Subpart F—Trust Fund Accounts: General Information**

**§ 115.700 Why is money held in trust for tribes and individual Indians?**

Congress has passed a number of laws that require the Secretary to establish and administer trust fund accounts for Indian tribes and certain individual Indians who have an interest(s) in trust lands, trust resources, or trust assets.

**§ 115.701 What types of accounts are maintained for Indian trust funds?**

Indian trust funds are deposited in tribal accounts, Individual Indian Money (IIM) accounts, and special deposit accounts. The illustration below provides information on each of these trust accounts.

Types of Trust Fund Accounts			Descriptions
Individual Indian Money (IIM) Accounts	Unrestricted IIM accounts		There are no restrictions on these accounts. Funds may be left on deposit, or paid to the account holder based upon instructions by the account holder.
	Restricted IIM accounts	Administratively Restricted	A temporary hold is placed on an account by OTFM where an address of record for an account holder is unknown or where more documentation is needed to make a distribution from an account.
		Supervised	A restriction is placed on the account by the BIA and funds from these accounts may only be withdrawn under a BIA approved distribution plan. The following account holders will have supervised accounts: <ul style="list-style-type: none"><li>• minors,</li><li>• emancipated minors,</li><li>• adults who are non-compos mentis,</li><li>• adults in need of assistance, and/or</li><li>• adults under legal disability as defined in this part.</li></ul>
		Encumbered	A restriction is placed on the account by the BIA until money owed from an account is paid to a specified party. The account holder may withdraw any money available in the account that is above the amount owed to specified parties.
	IIM Estate accounts		An account for a deceased IIM account holder.
Tribal Accounts			Generally, an account for a federally recognized tribe.
Special Deposit Accounts			An account for the temporary deposit of trust funds that cannot be distributed immediately to its rightful owner.

[66 FR 7094, Jan 23, 2001, as amended at 66 FR 8768, Feb 2, 2001]

**§ 115.702 What specific sources of money will be accepted for deposit into a trust account?**

We must accept proceeds on behalf of tribes or individuals from the following sources.

SOURCES	TRUST ACCOUNTS				
	Tribal	Individual Indian Money (IIM)			
		Unrestricted IIM Accounts	Restricted IIM Accounts		
			Administratively restricted	Supervised	Encumbered
Payments from the United States as a Result of —					
Federal laws requiring funds to be deposited in trust accounts	✓	✓	✓	✓	✓
Settlement of a claim related to trust assets that requires the funds to be deposited in trust accounts	✓	✓	✓	✓	✓
A final order from a United States court for a cause of action directly related to trust assets requiring funds to be deposited in trust accounts	✓	✓	✓	✓	✓
Unobligated or unspent forestry funds specifically appropriated for the benefit of such Indian tribe	✓				
Designation of the BIA as the representative payee (by another federal agency) to receive certain Federal assistance payments, such as VA benefits, Social Security, or Supplemental Security Income, on behalf of an individual Indian because there is no legal guardian for that individual			✓	✓	
Payments resulting from —					
Money directly derived from the title conveyance (e.g., sale, probate, condemnation) or use of trust lands or restricted fee lands or trust resources, including any late payment penalties, when paid directly to the Secretary on behalf of the account holder	✓	✓	✓	✓	✓
Penalties for trespass on trust lands or restricted fee lands	✓	✓	✓	✓	✓

Default or breach of the terms of a contract for the sale or use of trust lands, restricted fee lands, or trust resources arising from cash performance or surety bonds, or other source(s)	✓	✓	✓	✓	✓
A final order from a court of competent jurisdiction for a cause of action directly related to trust assets requiring funds to be deposited in trust accounts	✓	✓	✓	✓	✓
Deposits from an Indian Tribe —					
Redeposit of tribal trust funds previously withdrawn under an investment plan submitted and approved pursuant to the American Indian Trust Fund Management Reform Act of 1994, Pub L 103-412, 108 Stat. 4239, 25 U.S.C. § 4001 (Trust Reform Act)	✓				
Where a tribe under 25 U.S.C. 450f et seq. has contracted or compacted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds for the sale or use of trust assets pursuant to a contract that specifies that payments are to be made to the Secretary on behalf of a tribe or an individual	✓	✓	✓	✓	✓
Legislative settlement funds or judgment funds withdrawn, but not spent, for a specific project. Documentation showing source of funds is required.	✓				
Deposits from other sources —					
Interest earned on trust fund deposits	✓	✓	✓	✓	✓
Disbursements of tribal trust funds held by OTFM to tribal members as per capita payments	✓			✓	
As permitted by law (25 U.S.C. § 3109) to be deposited into an Indian forest land assistance account	✓				
Funds derived directly from trust lands, restricted fee lands, or trust resources that are presented to the Secretary on behalf of the tribe or individual Indian owner(s) of the trust asset, by the payor after being mailed to the owner(s) as required by contract (i.e., direct pay) and returned by mail to the payor as undeliverable	✓	✓	✓		✓

[66 FR 7094 Jan. 22, 2001 Redesignated at 66 FR 8768, Feb. 2, 2001]

**§ 115.703 May we accept for deposit into a trust account money not specified in § 115.702?**

No, we will not accept funds from sources that are not identified in the table in § 115.702 for deposit into a trust account.

**§ 115.704 May we accept for deposit into a trust account retirement checks/payments or pension fund checks/payments even though those funds are not specified in § 115.702?**

No, we will not accept retirement checks/payments or pension fund checks/payments or any funds from sources that are not identified in the table in § 115.702 for deposit into a trust account.

**§ 115.705 May we accept for deposit into a trust account money awarded or assessed by a court of competent jurisdiction?**

We will accept money awarded or assessed by a court of competent jurisdiction for a cause of action directly related to trust assets to be deposited into a trust account. Other funds awarded by a court of competent jurisdiction may not be deposited into a trust account.

**§ 115.706 When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust assets, what documentation is required to deposit the trust funds into a trust account?**

When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust assets, we must receive the funds awarded as stipulated in the court order and a copy of the court's order.

**§ 115.707 Will the Secretary accept administrative fees for deposit into a trust account?**

No. The Secretary will not accept administrative fees for deposit into a trust account because administrative fees are not trust funds. However, administrative fees may be deposited into a non-interest bearing, non-trust account with the BIA.

**§ 115.708 How quickly will trust funds received by the Secretary on behalf of tribes or individual Indians be deposited into a trust account?**

Trust funds received by the Secretary on behalf of a tribe or individual Indians will be deposited into a trust account within twenty-four hours, or no later than the close of business on the next business day following the receipt of funds at a location with a designated federal depository.

**§ 115.709 Will an annual audit be conducted on trust funds?**

Yes, in accordance with the Trust Reform Act an annual audit will be conducted on trust funds. Each tribe and IIM account holder will be notified when the Secretary has conducted an annual audit on a fiscal year basis of all the trust funds held by the United States for the benefit of tribes and individual Indians. This notice will be provided in the first quarterly statement of performance following the publication of the audit.

**INVESTMENTS AND INTERESTS**

**§ 115.710 Does money in a trust account earn interest?**

Yes, all money deposited in a trust account is invested and earns interest or yield returns, or both.

**§ 115.711 How is money in a trust account invested?**

OTFM manages trust fund investments and its investment decisions are governed by federal statute. See 25 U.S.C. §§ 161(a) and 162a.

**§ 115.712 What is the interest rate earned on money in a trust account?**

The rate of interest on a trust account changes based on how the money is invested and how those investments perform.

**§ 115.713 When does money in a trust account start earning interest?**

Funds must remain on deposit at least one business day before interest is earned. Interest earnings of less than one cent are not credited to any account.

**Subpart G—Tribal Accounts**

**§ 115.800 When does OTFM open a tribal account?**

A tribal account is opened when OTFM receives income from the sources described in § 115.702

**§ 115.801 How often will a tribe receive information about its trust account(s)?**

The OTFM is required to provide each tribe with a statement of performance quarterly, within or no later than 20 business days after the close of every quarterly statement period.

**§ 115.802 May a tribe make a request to OTFM to receive information about its trust account more frequently?**

Yes, a tribe may contact OTFM at any time to

- (a) Request information about account transactions and balances,
- (b) Make arrangements to access account information electronically, or
- (c) Receive a monthly statement

**§ 115.803 What information will be provided in a statement of performance?**

The statement of performance will identify the source, type, and status of the trust funds deposited and held in a trust account, the beginning balance, the gains and losses, receipts and disbursements, and the ending account balance of the quarterly statement period.

**§ 115.804 Will we account to a tribe for those trust funds the tribe receives through direct pay?**

No, under the Trust Reform Act we are only responsible for accounting for those trust funds received into, and maintained by, the Department's trust funds management system

**§ 115.805 If a tribe is paid directly under a contract for the sale or use of trust assets, will we accept those trust funds for deposit into a tribal trust account?**

If a contract for the sale or use of trust assets specifies that payments are to be made directly to a tribe, we will not accept these trust funds into a tribal trust account. Where a tribe

under 25 U.S.C. 450f *et seq.* has contracted or compacted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds for the sale or use of trust assets pursuant to a contract that specifies that payments are to be made to the Secretary on behalf of a tribe or an individual [the owner of the trust assets], the tribe must follow § 115.708 for the deposit of the trust funds into the trust account.

**§ 115.806 How will the BIA assist in the administration of tribal judgment fund accounts?**

(a) If the tribe requests assistance or if Congress directs the Secretary to provide assistance, BIA will provide technical assistance on developing a judgment use and distribution plan to a tribe

(b) BIA will review all tribal requests for distribution of tribal judgment funds to ensure that each request complies with any requirements associated with the use of that money found in statutory language, congressional directives, court orders, court-approved settlements, settlement agreements, use and distribution plans, or bond or loan payments

**INVESTING AND MANAGING TRIBAL TRUST FUNDS**

**§ 115.807 Will OTFM consult with tribes about investments of tribal trust funds?**

Upon the request of a tribe, OTFM will consult with the tribe annually to develop investment strategies to accommodate the cash flow needs of the tribe

**§ 115.808 Could trust fund investments made by OTFM lose money?**

The value of trust fund investments made by OTFM will vary depending on the type of investment and, including but not limited to, the following

- (a) Current interest rates,
- (b) Whether the security/investment is held to its maturity, and
- (c) Original purchase price

However, as long as the purchase price of the security/investment is

made at or below face value and the security/investment is held until maturity or payoff, the security/investment will not lose principal invested funds

**§ 115.809 May a tribe recommend to OTFM how to invest the tribe's trust funds?**

Tribes may recommend certain investments to OTFM, but the recommendations must be in accordance with the statutory requirements set forth in 25 U.S.C. §§ 161a and 162a. The OTFM will make the final investment decision based on prudent investment practices

**§ 115.810 May a tribe directly invest and manage its trust funds?**

A tribe may apply to withdraw its trust funds from OTFM for investment and management by the tribe. The tribe's request to withdraw funds must be in accordance with the requirements of the Trust Reform Act and 25 CFR part 1200, subpart B, unless otherwise specified by statutory language or the controlling document which governs the use of the trust funds.

**§ 115.811 Under what conditions may a tribe redeposit funds with OTFM that were previously withdrawn under the Trust Reform Act?**

Tribal trust funds withdrawn under the Trust Reform Act may be returned to OTFM under the following conditions

- (a) A tribe must make a written request to OTFM to redeposit all or part of the withdrawn trust funds,
- (b) No tribal trust funds may be redeposited to a tribal trust account during the first six months after being withdrawn, except with the approval of the Secretary,
- (c) Tribal trust funds may only be returned to OTFM a maximum of twice a year, except with the approval of the Secretary, and
- (d) A tribe must return withdrawn trust funds in accordance with the requirements of the Trust Reform Act in 25 CFR, part 1200, subpart C.

**§ 115.812 Is a tribe responsible for its expenditures of trust funds that are not made in compliance with statutory language or other federal law?**

If a tribe's use of trust funds is limited by statutory language or other federal law(s) and a tribe uses those trust funds in direct violation of those laws, absent an approved modification which allows for the expenditures, we will require the tribe to reimburse its trust fund account

**§ 115.813 Is there a limit to the amount of trust funds OTFM will disburse from a tribal trust account?**

OTFM will only disburse the available balance of the trust funds in a tribal trust account in accordance with a use and distribution plan, if applicable, and will not overdraw a tribal trust account. If a tribe's trust funds are invested in securities that have not matured, OTFM will only sell the asset to make cash available to the tribe if

(a) There are no restrictions against the sale, and

(b) A tribe provides OTFM with a tribal resolution stating that

- (1) The security must be sold,
- (2) The tribe acknowledges that they may incur a penalty when the security is sold, and
- (3) The tribe acknowledges that the security may lose value if it is sold prior to maturity.

**§ 115.814 If a tribe withdraws money from its trust account for a particular purpose or project, may the tribe redeposit any money that was not used for its intended purpose?**

A tribe may redeposit funds not used for a particular purpose or project if

(a) The funds were withdrawn in accordance with

- (1) The terms of Trust Reform Act,
- (2) The terms of the legislative settlement, or
- (3) The terms of a judgment use and distribution plan, and
- (b) The tribe can provide documentation showing the source of the funds to be redeposited

## WITHDRAWING TRIBAL TRUST FUNDS

**§115.815 How does a tribe request trust funds from a tribal trust account?**

To request trust funds from a tribal trust account, a tribe may:

(a) Make a written request to the BIA or the OTFM that is signed by the proper authorizing official(s), list the amount of trust funds to be withdrawn, provide any additional documentation or information required by law to withdraw certain trust funds, and must include a tribal resolution approving the withdrawal of the specified amount of trust funds; or

(b) Contact the OTFM to withdraw funds in accordance with the Trust Reform Act and 25 CFR part 1200.

**§115.816 May a tribe's request for a withdrawal of trust funds from its trust account be delayed or denied?**

(a) Action on a tribe's request for a withdrawal of trust funds may be delayed or denied if:

(1) The tribe did not submit all the necessary documentation;

(2) The tribe's request is not signed by the proper authorizing official(s);

(3) OTFM does not have documentation from the tribe certifying its recognized, authorizing officials;

(4) The tribe's request is in conflict with statutory language or the controlling document governing the use of the trust funds; or

(5) The BIA or OTFM requires clarification regarding the tribe's request.

(b) If action on a tribe's request to withdraw trust funds will be delayed or denied, the BIA or the OTFM will:

(1) Notify the tribe within ten (10) working days of the date of a request made under §115.815(a);

(2) Notify the tribe under the time frames established in 25 CFR part 1200 for requests made under the Trust Reform Act; and

(3) Provide technical assistance to the tribe to address any problems.

**§115.817 How does OTFM disburse money to a tribe?**

Upon receipt of all necessary documentation, OTFM will process the request for disbursement and send the tribe the requested amount of trust funds within one business day. When-

ever possible, trust funds will be disbursed electronically to an account at a financial institution designated by the tribe. If there are circumstances that preclude electronic payment, OTFM will mail a check.

## UNCLAIMED PER CAPITA FUNDS

**§115.818 What happens if an Indian adult does not cash his or her per capita check?**

(a) If an Indian adult does not cash his or her per capita check within twelve (12) months of the date the check was issued, the check will be canceled and the trust funds will be deposited into a "returned per capita account" where the funds will be maintained until we receive a request for disbursement by the Indian adult or for disposition by a tribe pursuant to §115.820.

(b) If an Indian adult's per capita check is returned to us as undeliverable, the trust funds will be immediately deposited into a "returned per capita account" where the funds will be maintained until we receive a request for disbursement by the individual or for disposition by a tribe pursuant to §115.820.

**§115.819 What steps will be taken to locate an individual whose per capita check is returned as undeliverable or not cashed within twelve (12) months of issuance?**

The OTFM will notify a tribe of the names of the individuals whose per capita checks were returned as undeliverable or not cashed within twelve (12) months of issuance and will take reasonable action, including utilizing electronic search tools, to locate the individual entitled to receive the per capita funds.

**§115.820 May OTFM transfer money to a returned per capita account to a tribal account?**

Funds in a returned per capita account will not automatically be returned to a tribe. However, a tribe may apply under 25 U.S.C. 164 and Public Law 87-283, 75 Stat. 584 (1961), to have the unclaimed per capita funds transferred to its account for the tribe's use after six years have passed from the date of distribution.

**Subpart H—Special Deposit Accounts****§115.900 Who receives the interest earned on trust funds in a special deposit account?**

Generally, any interest earned on trust funds in a special deposit account will follow the principal (i.e., the tribe or individual who owns the trust funds in the special deposit account will receive the interest earned).

**§115.901 When will the trust funds in a special deposit account be credited or paid out to the owner of the funds?**

OTFM will disburse the trust funds from a special deposit account and deposit the trust funds in the owner's trust account following the BIA certification of the ownership of the funds and OTFM's receipt of such certification.

**§115.902 May administrative or land conveyance fees paid as federal reimbursements be deposited in a special deposit account?**

No, administrative or land conveyance fees paid as federal reimbursements may not be deposited with OTFM, which includes special deposit accounts. These fees must be deposited in the Federal Financial System.

**§115.903 May cash bonds (e.g., performance bonds, appeal bonds, etc.) be deposited into a special deposit account?**

No, cash bonds may not be deposited with OTFM, which includes the special deposit accounts at OTFM. Cash bonds issued by the Secretary are to be deposited in non-interest bearing accounts until the term of the bonds expire.

**§115.904 Where earnest money is paid prior to Secretarial approval of a conveyance or contract instrument involving trust assets, may the BIA deposit that earnest money into a special deposit account?**

No, any money received prior to Secretarial approval of conveyance or contract instrument involving trust assets must be deposited into a non-interest bearing, non-trust account. After the Secretary approves the conveyance or contract instrument involving trust as-

sets, the money designated by the conveyance or contract instrument will be deposited into a trust fund account.

**Subpart I—Records****§115.1000 Who owns the records associated with this part?**

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under this part, including the operation of a trust program pursuant to 25 U.S.C. 450f *et seq.*; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

**§115.1001 How must records associated with this part be preserved?**

(a) Any organization, including tribes and tribal organizations, that have records identified in §115.1000(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in §115.1000(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, the tribe or tribal organization may be prevented from being able to adequately document essential transactions or furnish information necessary to protect its legal